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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

GLADYS QUANDER TANCIL and BARBARA JACKSON WILLIAMS, *Appellants*,

v.

WILLIAM P. WOOLLS and FRANKLIN P. BACKUS, Judges of the Corporation Court of the City of Alexandria, Virginia, *Appellees*

On Appeal from the United States District Court for the Eastern District of Virginia

JURISDICTIONAL STATEMENT

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JURISDICTIONAL STATEMENT

Appellants appeal from the adverse part of the final order entered April 28, 1964, by the District Court, consisting of three judges constituted pursuant to Title 28, United States Code, Section 2284, and submit

this Statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial question is presented.

OPINION BELOW

The opinion of the District Court for the Eastern District of Virginia, Alexandria Division, is reported at 230 F. Supp. 156. The opinion and final order of the District Court are attached hereto as Appendix B.

JURISDICTION

The jurisdiction of the District Court to decide the question involved in this appeal was invoked under the Fourteenth Amendment to the United States Constitution, Title 42, United States Code, Sections 1981 and 1983, and Title 28, United States Code, Sections 1343 (3) and 2201. The judgment of the District Court was entered on April 28, 1963, and notice of appeal was filed in that court on June 26, 1964. The jurisdiction of the Supreme Court to review this decision by direct appeal is conferred by Title 28, United States Code, Sections 1253 and 2101(b). The Court's jurisdiction to review the case on direct appeal is sustained by *Anderson* v. *Martin*, 375 U.S. 399.

QUESTION PRESENTED

Whether Section 20-101, Code of Virginia (1950), which requires every decree of divorce entered by a court in Virginia to "contain a recital showing the race of the husband and wife," violates the Fourteenth Amendment to the Constitution of the United States.

STATUTES INVOLVED

Sections 20-101 and 20-123, Code of Virginia (1950), are set forth in Appendix A hereto.

STATEMENT

Appellants Gladys Quander Tancil and Barbara Jackson Williams are Negro citizens of the United States and residents of the State of Virginia. They brought this action in the District Court to have declared unconstitutional, and to enjoin enforcement of Section 20-101, Code of Virginia (1950), which requires every decree of divorce entered by a court in Virginia to "contain a recital showing the race of the husband and wife."[1] The appellees William P. Woolls

[1] Appellants were part of a larger group of 14 Negro and white plaintiffs, who, in a single proceeding in the District Court, challenged the constitutionality of several provisions of the Virginia Code and Constitution, in addition to the one here at issue, which require the maintenance of various types of public records on a racial basis. The other provisions of law attacked, and which the District Court held unconstitutional (*infra*, pp. 2a-6a) are as follows:

(a) The provision of Section 38 of the Constitution of Virginia which requires lists of those who have paid their poll taxes to state "white and colored persons separately."

(b) The provision of Section 24-28, Code of Virginia (1950), as amended, which requires registration lists of "white and colored" voters to be "kept and arranged in separate books or records."

(c) The provision of Section 24-118, Code of Virginia (1950), as amended, which requires registration lists of voters in certain counties and cities to be kept in loose leaf binders "with white sheets for recording the names of white voters and buff sheets for recording the names of colored voters."

(d) The provision of Section 24-120, Code of Virginia (1950), as amended, which requires lists of those who have paid their poll taxes and filed certificates of residence to state "white and colored persons" and certain tribal Indians separately.

(e) The provision of Section 58-790, Code of Virginia (1950), as amended, which requires assessors, at the time of

and Franklin P. Backus are the two judges of the Corporation Court of the City of Alexandria, Virginia. Defendant Woolls, on March 4, 1952, entered a decree of divorce in the matter known on the records of the Corporation Court as *Gladys Quander Tancil* v. *Herbert Pike Tancil, III*, Chancery No. 8205, which decree recited that each party to the action, including appellant Gladys Quander Tancil, is "colored."

The Corporation Court of the City of Alexandria, of which appellees Woolls and Backus are the judges also has jurisdiction over a pending divorce proceeding known on the records of that court as *Barbara Jackson Williams* v. *Charles Oscar Williams*, Chancery No. 10322, in which proceeding appellant Barbara

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making assessments of real estate to "note whether the owner is white or colored, or Indian."

(f) The provisions of Section 58-804, paragraphs (b), (d) and (h), Code of Virginia (1950), as amended, which require land books for the cities and counties to be arranged so that separate listings are made of real estate owned by "white persons," "colored persons" and certain "tribal Indians."

(g) The provision of Section 58-880, Code of Virginia (1950), as amended, which requires personal property books to be arranged so that personal property assessments with taxes and levies are shown separately for "white persons" and "colored persons."

The District Court found that these provisions "serve no other purpose than to classify and distinguish official records on the basis of race or color." (*infra*, p. 4a). The Court held that by requiring the separation of names by race, the provisions conflict with the Fourteenth Amendment of the Constitution; the Court therefore enjoined their enforcement. Various State and local officials, who were defendants below, have noted their appeal to this Court from the District Court's decision (*Virginia State Board of Elections, et al.* v. *Hamm*, No. ——, October Term, 1964) the single record of the proceeding before the District Court has been filed in this Court, and presumably the Court will want to consider the two cases together.

Jackson Williams is suing for, and is entitled to, a decree of divorce from the bond of matrimony on the ground of wilful desertion and abandonment. The appellees Woolls and Backus, are required, pursuant to Section 20-101 Code of Virginia (1950) to include in any decree of divorce granted in the pending action involving appellant Williams a recital showing that she is of the Negro race.

Appellants, in addition to seeking a declaration of the unconstitutionality of Section 20-101, requested the District Court to enjoin the appellees from enforcing, or in any manner giving effect to the provision. Such an injunction would protect appellant Williams from threatened harm resulting from application of the statute in connection with her pending divorce action. The injunctive relief sought by appellant Tancil would require the Corporation Court to strike from her decree of divorce entered by appellee Woolls on March 4, 1952, the word "colored" where it appears following the names of the parties.

A three-judge District Court was convened pursuant to Title 28, United States Code, Section 2284, and the cause was heard February 21, 1964. On April 28, 1964, the Court rendered its decision and a final order granting part of the relief sought,[2] but denying relief to these appellants. The Court declined to hold Section 20-101 unconstitutional, on the ground, as stated by it, that "vital statistics * * * are aided by the denotation in the divorce decree of the race of the parties." This ruling by the District Court upholding the constitutionality of Section 20-101 and refusing to enjoin its enforcement constitute the subject of this appeal.

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[2] See pp. 3-4, n. 1, *supra*.

THE QUESTION PRESENTED IS SUBSTANTIAL

It cannot be gainsaid, as the District Court held, that a statute is unconstitutional which serves "no other purpose than to classify and distinguish official records on the basis of race or color" (*infra*, p. 4a). That ruling accords with this Court's expressed view that, "racial classifications are 'obviously irrelevant and invidious.'" *Goss* v. *Board of Education*, 373 U.S. 683, 687, quoting, *Steele* v. *Louisville and Nashville R. Co.*, 323 U.S. 192, 203. However, the District Court closed its eyes to inescapable fact when it failed to apply this fundamental precept to Section 20-101.

The District Court manifestly erred in upholding the constitutionality of Section 20-101 of the Virginia Code on the ground that the section is related to the State's function of gathering vital statistics concerning divorces. Another section of the Code, Section 20-123, is the only provision of the State's divorce law relating to the collection of vital statistics. Section 20-123 provides that the clerk of a court which grants divorces must make a report of each divorce granted in his court to the State Registrar of Vital Statistics on a form furnished by the State Bureau of Vital Statistics[3] for that purpose. Pursuant to the terms of Section 20-123, that report must include: (a) alleged cause of the divorce; (b) sex of plaintiff and defendant; (c) occupation of plaintiff and defendant; (d) date of marriage; (e) place of marriage; (f) number

[3] The Bureau of Vital Statistics is established within the State Department of Health pursuant to Section 32-353.5, Code of Virginia (1962 Cum. Supp.). The Bureau's authority and functions are spelled out in detail in Sections 32-353.4 through 32-353.31 of the Code. The State Registrar is in charge of the Bureau.

of children in family; (g) time of separation, and, finally (h) plaintiff's and defendant's "*color*".[4]

The collection of vital statistics concededly is a legitimate function of government. But the record of this case is devoid of any evidence that Section 20-101, which requires the recital of race in divorce decrees, was enacted with a statistical purpose in view or that it has ever served such a function. There were no issues of fact tried before the District Court in this case. The appellants made a timely motion for summary judgment pursuant to Rule 56 of the Rules of Civil Procedure, and oral argument of counsel, plus the pleadings and briefs of the parties, provided the basis for the Court's consideration of the matter. The appellees, through their counsel, the Attorney General, offered no evidence to show that Section 20-101 is related to the collection of vital statistics by the State. It is apparent, therefore, from this lack of evidence, as well as the existence in the Code of Section 20-123, which relates by its terms to the collection of statistics, that the Court's finding that Section 20-101 serves a statistical purpose represents sheer speculation. Since the State has shown no justification for the racial provisions contained in Section 20-101, the section should

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[4] There is no definition in the Code of the term "race" as it is used in Section 20-101. Section 1-14 of the Code (1950), however, provides:

> *Colored persons and Indians defined.*—Every person in whom there is ascertainable any Negro blood shall be deemed and taken to be a colored person, and every person not a colored person having one-fourth or more of American Indian blood shall be deemed an American Indian; except that members of Indian tribes living on reservations allotted them by the Commonwealth having one-fourth or more of Indian blood and less than one-sixteenth of Negro blood shall be deemed tribal Indians so long as they are domiciled on such reservations. (Code 1919, § 67; 1930, p. 97).

have been held unconstitutional by the District Court and its enforcement enjoined.[5]

The decisions of this Court make clear that the processes of a state court system may not be used to promote distinctions between persons based on race. *Johnson* v. *Virginia*, 373 U.S. 61; *Hamilton* v. *Alabama*, 376 U.S. 650. Under the statutory provision here in question, Virginia has conditioned access to its courts by parties seeking a divorce on a requirement that they submit to a judicial determination of their race. If, as in the case of the appellants, the parties involved are Negro, the requirement is demeaning in the same sense as any other form of racial discrimination; and for Negro lawyers in the State, serving Negro clients, it is an annoying and irritating experience every time they are required to prepare a divorce decree.[6]

Virginia's divorce law is contained in Title 20, Chapter 6, of the State Code. Chapter 6 contains 37 sections, but except for Section 20-101, requiring the recital of race, no requirement is set forth in any other part of the law as to the form or content of a divorce decree. Furthermore, with regard to Section 123, which explicitly concerns the collection of vital statistics, of the eight items of information which must

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[5] The District Court plainly was mistaken if it meant by its decision to suggest that a provision of law which has a racial purpose, and no other, is saved from unconstitutionality because it aids in the collection of statistical data. Every law which promotes racial distinctions, is likely to facilitate the collection of statistics concerning race. It is obvious, however, that this fact alone does not provide justification for such a law or make it constitutional.

[6] Compare *Brown* v. *Board of Education*, 347 U.S. 483, 494, where the Court took notice of the fact that state-compelled discrimination between the races "is usually interpreted as denoting the inferiority of the Negro group."

be reported by clerks of courts to the State registrar, only the item relating to race is set apart by the requirement of judicial determination. The singling out of "'race' as the single item of information" required in a decree "in itself 'underscores the purely racial character and purpose' of the statute." *Anderson* v. *Martin,* 375 U.S. 399, 403. Nor does it matter that Section 20-101 applies equally to Negro and white. "Race is the factor upon which the statute operates and its involvement promotes the ultimate discrimination which is sufficient to make it invalid." *Id.* at 404; and see *N.A.A.C.P.* v. *Alabama ex rel. Patterson,* 357 U.S. 449, 463; *Bates* v. *Little Rock,* 361 U.S. 516, 524.[7]

It is submitted that the District Court erred in failing to hold that Section 20-101 conflicts with the Fourteenth Amendment to the Constitution. We believe that the question presented by this appeal is substantial and that it is of public importance.

Respectfully submitted,

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August 1964

[7] At the District Court hearing, counsel for the appellees disclaimed any relationship between Section 20-101 and Virginia's miscegenation statute. The latter provisions are contained in a separate chapter, Chapter 4, of Title 20, entitled "Colored Persons; Marriage Between White and Colored Persons." The validity of that chapter is not at issue in this proceeding and an examination of its provisions fails to disclose any way in which it would be affected by a declaration of the unconstitutionality of Section 20-101.

APPENDIX A

Text of statutes involved (Code of Virginia (1950)):

Sec. 20-101. *Decree to show race of parties.*—Any interlocutory or final decree granting a divorce a mensa et thoro or a vinculo matrimonii, as the case may be, shall contain a recital showing the race of the husband and wife; but the failure of such decree to contain such recital shall not affect the validity of such decree or divorce. (Code 1919, § 5106; 1938, p. 202.)

* * * * *

Sec. 20-123. *Report of divorces by clerk to State Registrar of Vital Statistics.*—The clerk of every court authorized to grant divorces in Virginia shall on or before the tenth day of each month forward to the State Registrar of Vital Statistics a report of each divorce and of each annulment of a marriage granted in his court during the preceding month, on the forms provided by the Bureau of Vital Statistics for that purpose.

The reports shall include alleged cause, sex, occupation, and color of plaintiff and defendant, date and place of marriage, number of children in family, and time of separation, provided however, the record discloses such information.

Such reports shall be filed and preserved in the State Registrar's office, and from them he shall prepare annually a compilation of divorces in each county and corporation and make a report of such compilation to the General Assembly at each regular session.

There shall be allowed to such clerks a compensation of twenty-five cents for every divorce reported, to be paid as a part of the costs of the suit.

The State Registrar shall certify to the Comptroller the number of divorces and annulments reported by each clerk. (1918, p. 397; 1938, p. 188; Michie Code 1942, § 5116a.)

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

Civil Action No. 3127

E. LESLIE HAMM, ET AL., *Plaintiffs*

v.

VIRGINIA STATE BOARD OF ELECTIONS, ET AL., *Defendants*

(Argued February 21, 1964 Decided April 28, 1964)

Before BRYAN, Circuit Judge, and LEWIS and BUTZNER, District Judges.

Allison W. Brown, Jr., Esquire, Washington, D. C. and Otto L. Tucker, Esquire, Alexandria, Virginia, attorneys for the plaintiffs;

Robert Y. Button, Esquire, Attorney General of Virginia; R. D. McIlwaine, III, Esquire, Assistant Attorney General of Virginia; William J. Hassen, Esquire, Commonwealth's Attorney, Arlington, Virginia; Ralph G. Louk, Esquire, Commonwealth's Attorney, Fairfax, Virginia; Earl F. Wagner, Esquire, Commonwealth's Attorney, Alexandria, Virginia, attorneys for defendants.

ALBERT V. BRYAN, Circuit Judge:

Certain Virginia statutes and a section of her constitution are here attacked by plaintiff Negro and white citizens of the State as violative of the Fourteenth and Fifteenth amendments of the Federal constitution. The laws assailed deal with records relating to: (1) voting, (2) property tax assessments, and (3) divorce. Plaintiffs allege that provisions in the first category "require lists of persons who are qualified voters in Virginia to be main-

tained on a racially segregated basis.'"[1] The second category is averred to "provide for the maintenance on a racially segregated basis of public records pertaining to property ownership and taxation".[2] The divorce statute in suit directs that every decree of divorce must recite the race of the spouses.[3] Besides asking for a declaration of

[1] Specifically, the following portions of Virginia's voting records laws are questioned as unconstitutional:

(a) Article II, § 38 of the Virginia Constitution—requiring lists of those who have paid their poll taxes to state "white and colored persons separately."

(b) Section 24-28 Code of Virginia—requiring registration lists of "white and colored" voters to be "kept and arranged in separate books or records."

(c) Section 24-118 Code of Virginia—requiring registration lists of voters in certain counties and cities to be kept in loose leaf binders "with white sheets for recording the names of white voters and buff sheets for recording the names of colored voters."

(d) Section 24-120 Code of Virginia as amended in 1963, requiring lists of those who have paid their poll taxes and filed certificates of residence to state "white and colored persons" and certain tribal Indians separately.

[2] That part of the property ownership and taxation statutes criticized are:

(a) Section 58-790, Code of Virginia, requiring assessors, at the time of making assessments of real estate to "note whether the owner is white or colored, or Indian as defined by Section 1-14 of the Code."

(b) Section 58-804, pars. b, c, d and h, Code of Virginia, requiring land books for the cities and counties to be arranged so that separate listings are made of real estate owned by "white persons," "colored persons" and certain "tribal Indians."

(c) Section 58-880, Code of Virginia, requiring personal property books to be arranged so that personal property assessments with taxes and levies are shown separately for "white persons" and "colored persons."

[3] Section 20-101, Code of Virginia, requires "any interlocutory or final decree granting a divorce a mensa et thoro or a vinculo matrimonii . . . [to] contain a recital showing the race of the husband and wife. . . ."

the invalidity of these statutory and constitutional provisions, plaintiffs also "seek an injunction restraining the various governmental officials named as defendants from enforcing, executing or administering their provisions."

The "separate but equal" racial doctrine was condemned a decade ago in Brown v. Board of Education, 347 U.S. 483 (1954). Subsequent decisional law has made it axiomatic that no State can directly dictate or casually promote a distinction in the treatment of persons solely on the basis of their color. To be within the condemnation, the governmental action need not effectuate segregation of facilities directly. *Cf.* Anderson v. Martin, 375 U.S. 399, 402 (1964). The result of the statute or policy must not tend to separate individuals by reason of difference in race or color. No form of State discrimination, no matter how subtle, is permissible under the guarantees of the Fourteenth amendment freedoms. See, *e.g.*, Burton v. Wilmington Parking Authority, 365 U.S. 715, 721-26 (1961); NAACP v. Alabama, 357 U.S. 449, 463 (1958).

Although the legislative history of the provisions presently under examination cannot adequately be traced, it is evident from the language employed that, save for the divorce decree statute, they serve no other purpose than to classify and distinguish official records on the basis of race or color. Separation of white and colored on the poll tax, residence-certificate and registration lists as well as on the assessment rolls renders these provisions invalid under the equal protection clause of the Fourteenth amendment.

Of course, the designation of race, just as sex or religious denomination, may in certain records serve a useful purpose, and the procurement and compilation of such information by State authorities cannot be outlawed per se. For example, the securing and chronicling of racial data for identification or statistical use violates no constitutional privilege. If the purpose is legitimate, the reason

justifiable, then no infringement results. The infirmity of the provisions just mentioned lies in their mandate of *separation* of names by race.

Vital statistics, obviously, are aided by denotation in the divorce decrees of the race of the parties. This provision of section 20-101 of the Virginia Code is not objectionable in law. Of course, the advertence must be made in every case, not just in suits involving Negroes.

For the reasons outlined, the defendant State and local officers will be restrained from further administration and enforcement of the Virginia laws in issue insofar as they are inconsistent with the views herein expressed. Since no voting rights and tax assessments are impaired by the present practice, and so there is no urgency for earlier changes, compliance with the restraint we now impose will not be required before December 31, 1964.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

Civil Action No. 3127

E. LESLIE HAMM, ET AL., *Plaintiffs*

v.

VIRGINIA STATE BOARD OF ELECTIONS, ET AL., *Defendants*

Final Order

Upon the findings of fact and conclusions of law, as well as for the reasons, set forth in the opinion of the Court this day filed, it is DECLARED:

1. That Article II, § 38 of the Constitution of Virginia is in conflict with the Fourteenth amendment of the Constitution of the United States insofar as the said section

requires the lists of poll taxes paid to state the names of white and colored persons separately;

2. That § 24-28 of the Code of Virginia is in conflict with the Fourteenth amendment of the Constitution of the United States insofar as the said section requires that the voting registration lists of white and colored persons be kept and arranged in separate books or records;

3. That § 24-118 Code of Virginia is in conflict with the Fourteenth amendment of the Constitution of the United States insofar as the said section requires the registration lists of voters in named counties and cities to be kept in binders with white sheets for recording the names of white voters and buff sheets for recording the names of colored voters;

4. That § 24-120 Code of Virginia, as amended in 1963, is in conflict with the Fourteenth amendment of the Constitution of the United States insofar as the said section requires the lists of persons who have paid their poll taxes and filed certificates of residence to state separately the names of white and colored persons and certain tribal Indians;

5. That §§ 58-790; 58-804, paragraphs b, c, d and h; and 58-880 Code of Virginia are in conflict with the Fourteenth amendment of the Constitution of the United States insofar as the said sections require the lists of assessments of real estate, the arrangement of the listings in the land books of real estate, and the arrangement of the personal property books to note and show separately the names of the property owners as white or colored persons; and

6. That § 20-101, Code of Virginia (1950) is not in conflict with the Fourteenth amendment of the Constitution of the United States.

Accordingly, it is ADJUDGED, ORDERED and DECREED that the defendants, their agents, employees and successors be,

and each of them is hereby, restrained and enjoined from enforcing any of the constitutional or statutory provisions hereinbefore declared to be in conflict with the Fourteenth amendment of the Constitution of the United States, but this injunction shall not be effective before December 31, 1964.

United States Circuit Judge

United States District Judge

United States District Judge

April 28th, 1964